2001

State of Utah v. Sylvester Lawler : Reply Brief of Appellant

Utah Court of Appeals

Christopher D. Ballard; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorneys for Appellee.
Sylvester Lawler; Pro Se.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH Plaintiff/Appellee,	Case NO. 20011006-CA
V.	PRIORITY NO. 2
SYLVESTER LAWLER Defendant/Appellant	

REPLY BRIEF OF APPELLANT

Appeal from the denial of a petition for Post-Conviction Relief, in the Third Judicial District Court, Salt Lake County, The Honorable Dennis M. Fuchs presiding

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DETERMINATIVE AUTHORITY

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ARGUMENTS

I. CONTRARY TO THE STATE'S DENIAL OF PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND CONFLICT OF INTEREST THE RECORD'S DEMONSTRATES AND CONFIRMS PETITIONER'S CLAIM

Petitioner was denied the right to Counsel of Choice, BLAND V. California Department of Corrections, 20 F3d 1469 (9th Cir. 1994). The Trial Court denied Petitioner's Counsel motion to withdraw and recommended the appointment of the Salt Lake Legal Defenders Association to represent petitioner, as requested by Petitioner, Powell V. Alabama, 287 US 45, 77 LEd 158, 53 SCt 55 (1932). Petitioner was left without a Choice of Counsel and Suffered from a Counsel with divided loyality, LockHart V. Terhune, 250 F3d 1223 (9th Cir. 2001)

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petitioner alerted the Court regarding his dissatisfaction With his attorney performance (see petitions minutes pg(last)) Court: Dated 12-06-00, Regarding letter from defendant once defendant is Sentenced, Court no longer has jurisdiction. Court advises defendant if he is not satisfied with his Sentence he will need to Appeal it.

The State repeatly uses petitioners plea Colloquy to demonstrate petitioners Satisfation with his attorney's advice and Work, Br. Appellee pg6. But Contrary to the States Claim petitioner post-Conviction Relief intent was to rebuke and disagree with the term of accepting his guilty plea and renounces any State-ments made under the advise of his Counsel,

The State claims that Petitioner Counsel negotiated reduce Petitioners Charges from two first degree felonies. to one Second degree felony and had petitioner gone to trial, there was a substantial likelihood that he would be convicted of both first degree felonies, Br. of Appellee pg.9. The State is not allowed to State their belief or opinion regarding the guilt of a defendant, AUS V. Garcia-Guizar, 160 F3d 511 (9th Cir. 1998). The State fails to acknowledge and contradicts, State V. Baker, 671 P.2d 152 (Utah 1983) involving giving instruction of a Lesser Included offense. Because of petitioners unfamilarity with the Law he was decieved to believe that he was receiving a favorable plea-bargain to induce his change of plea, but instead he received a Lesser Included offense and was Counseled to plea guilty, US V. King, 62 F3d 891 (7th Cir. 1995), Gonzalez V. US, 33 F3d 1047 (9th Cir. 1994) Strickland STandard (Strickland V. Washington)

for ineffective assistance of Counsel claims extends to assistance with guilty plea. A Lesser INCluded offense is not a negotiated plea-bargain and was not to be offered under the exchange for a guilty plea, and has no accreditation toward petitioners attorney ability to negotiate a plea offer, but is simply a new charged offense that petitioner faced to be tried on. This error demonstrates that the State ruling fails.

II. BECAUSE CONTROVERSY EXIST AND ISSUES ARE STILL PRESEN, THE STATES RULING OF MOOT FAILS.

The State claims it corrected the judgment and sentence to State a Conviction of forcible Sex Abuse

rather than RAPE. Br. of Appellee, p.10-11, and claims the Court Sent a correct Sentence and Judgment to petitioner and the Board of Pardon on 11 August 2000.

The State Claim fails because Petitioner has received Correspondence from the Board of Pardon Showing a Conviction of Rape (See Board of Pardon Special attention review @ Br. of Appellant Addendum B) as of this date of Appeal.

At Murphy V. Hunt, 455 US. 478, 472, 71 LEd2d 353, 102 Sct 1181 (1982), County of Los-Angeles V. Davis, 440 US 625, 59 LEd2d 642, 99 SCt 1379 (1979) A case involving an alleged Violation of Law becomes moot when: 1) it can be said with assurance that there is no reasonable expectation that the alleged Violation will recur; and 2) interim relief or events have Completely and irrevocably eradicated the effects of the alleged Violation, at DiGiore V. Ryan, 172 F3d 454 (7th Cir. 1999) Case is moot if NO

Controversy exist between the parties. The State Claim fails to demonstrate its Claim of moot because issues presented are still present, and prejudice petitioner's incarceration duration, breaching his plea agreement, US V. Williams, 102 F3d 923 (7th Cir. 1996) plea agreements are not simply ordinary contracts but implicate important constitutional rights; their negotiation and execution require the utmost circumspection on part of government. The Courts error has lead petitioner into a Sentencing entrapment where the effect of the Court error has prejudice the outcoming of petitioners incarceration where no decisions base on the Courts error has been revised nor remedied therefore the State Claim of moot fails. The Court has also sent correspondence to petitioner's stating his conviction as Rape far after its Claim of moot and Claims that Court remedied their error (see Denial for reconsideration reply @ Br. of Appellant Addendum B), Showing

a recur of the alleged Violation.

III. THE POST-CONVICTION COURT INCORRECTLY RULED THAT PETITIONER PLEA WAS VALIDLY ENTERED

The State Claims that Petitioner plea Colloquy and Affidavit affirm petitioners plea was entered knowingly, intelligently, and Voluntarily. But Contrary to the State Claim petitioner was counseled to plea guilty under mistaken belief of a more favorable plea-bargain. The State Claims that prosecuting attorney telephoned petitioners attorney only to finalize the same agreement that was formally entered on the record the next morning at the plea hearing, and that it was necessary because trial was to begin the next morning (see BC of Appellee pg. 13). The State Claim is without merit and used to undermine petitioners Claim. The State fail to acknowledge State V. Baker, 671 P.2d 152 (Utah 1983)

Where a Lesser Included Offense is not a negotiated plea agreement that must be discuss whether to its term of exceptance nor is it a agreement in exchange for a guilty plea, Prosecutor James Cope alerted the Courts of a Similar ((sim'ə-lər) adj. alike though not identical) negotiation to the earlier Lesser INCluded offense took place over telephone (See Change of Plea Proceeding pg. 10 Line 18-21). Records reveal that the present Lesser Included offense Charge was from a earlier instruction to a Lesser Included Offenses (See Change of Plea proceeding pg 3-4 lines 25, 1-3). And Petitioner could not have agreed to terms of accepting a plea of guilty to charges he was to be tried on unless a favorable plea-bargain took place, See US V Lawlor, 168 F3d 633 (2nd Cir. 1999), and US V Baldacchino, 762 F2d 170 (1st Cir. 1985). Petitioners Counsel agreed to the term of a guilty plea without petitioners Consent.

CONCLUSION

Based on the foregoing, as well as that previously submitted in the Brief of Appellant, Petitioner Mr. Lawler respectfully asks that this Court reverse his Post-Conviction denial and grant relief as requested in Brief of Appellant and for such other relief as the Court deems just and appropriate under the circumstances in this case.

Respectfully Submitted this 26th day of July, 2002

Sylvester Lawler
Attorney pro se
Appellant

ADDENDUM

No Addendum is necessary pursuant to Utah Rule of Appellate procedure 24(a)(11).

CERTIFICATE OF SERVICE

I, Sylvester Lawler, hereby certify that I personally caused to be mailed by First Class Mail, postage prepaid, two (2) true and correct copies of the foregoing Reply Brief of Appellant to the following on the 26th day of July, 2002:

Christopher D. Ballard (8497)
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and (8) eight true copies to the following on the 26th day of July, 2002:

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Sylvester Lawler